

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

THOMAS S. MANFRE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 08 C 1281
	)	
JEROME MAY, WILLIAM MAY,	)	Judge Matthew J. Kennelly
DAVID MAY, and R&M FREIGHT,	)	Magistrate Judge
INC.,	)	Michael T. Mason
	)	
Defendants.	)	

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R&M FREIGHT, INC.,	)	
	)	
Defendant/Counter-Plaintiff,	)	
	)	
v.	)	
	)	
THOMAS S. MANFRE, Plaintiff/	)	
Counter-Defendant, and SPECIALS	)	
TRANSPORTATION, INC., an Illinois	)	
Corporation, Third-Party Defendant.	)	

**RESPONSE TO PLAINTIFF'S MOTION TO STRIKE DEFENDANTS'  
AFFIRMATIVE DEFENSES**

Defendants JEROME MAY, WILLIAM MAY and DAVID MAY (collectively, "the May Brothers"), by their undersigned counsel and for their Response to the Motion to Strike Affirmative Defenses (Doc. 25) and Memorandum in Support thereof (Doc. 26) filed by Plaintiff/Counter-Defendant THOMAS S. MANFRE ("Manfre"), states as follows:

The May Brothers direct the Court and Mr. Manfre to their Amended Affirmative Defenses (Doc. 40), filed on September 8, 2008, which cure any purported defect in their original Affirmative Defenses and obviate the need for a response to the instant Motion. *See Nolan S.p.A. v. Dyna Group Int'l Corp.*, 1990 WL 93314, at \*1 (N.D. Ill. June 19, 1990)(once

amended pleading is interposed, the first is superseded and no longer performs any function in the case); *Cat Scale Co. v. Truck Stop Scale Co.*, 2005 WL 3311439, at \*1 (N.D. Ind. Dec. 5, 2005)(filing of amended pleading renders moot any motions or sanctions directed to the original).

For the foregoing reasons, Defendants Jerome May, William May and David May respectfully request that this Court enter an Order denying Plaintiff/Counter-Defendant Thomas Manfre's Motion to Strike as moot and for such further and additional relief as the Court deems just and appropriate.

Respectfully submitted,

JEROME MAY, WILLIAM MAY  
and DAVID MAY,

By: s/ Ethan F. Hayward  
One of their attorneys

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Simon J. Hill  
Ethan F. Hayward  
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**CERTIFICATE OF SERVICE**

I hereby certify that on September 8, 2008, a copy of the foregoing was filed electronically. Notice of filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ Ethan F. Hayward

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